

Message Text

LIMITED OFFICIAL USE

PAGE 01 MANILA 15270 01 OF 03 310724Z
ACTION TRSE-00

INFO OCT-01 EA-10 ISO-00 CIAE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
AID-05 COME-00 EB-08 FRB-03 XMB-02 OPIC-03 LAB-04
SIL-01 OMB-01 CEA-01 NEA-10 IO-13 STR-07 /122 W
-----039405 310738Z /11
P 310700Z AUG 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC PRIORITY 0925

LIMITED OFFICIAL USE SECTION 01 OF 03 MANILA 15270

USADB

FOR NAC AGENCIES

PASS TREASURYDEP FOR SHERK

EO 11652:NA
TAGS: EAID, EFIN, ADB
SUBJECT: REVIEW OF USES OF CONSULTANTS

SUMMARY: ADB MANAGEMENT PROPOSES TO REVISE THE BANK'S GUIDELINES ON USES OF CONSULTANTS. THE MAJOR PROPOSAL IN THE WORKING PAPER ON THE ABOVE SUBJECT WOULD AUTHORIZE BORROWERS TO ADOPT THE TWO-ENVELOPE SYSTEM. OTHER CHANGES IN WORDING WOULD SPECIFICALLY (1) SEEK INCLUSION WHERE FEASIBLE OF TECHNICALLY QUALIFIED FIRMS (AND INDIVIDUALS) FROM DEVELOPING MEMBER COUNTRIES (DMCS) OF THE BANK ON SHORT LISTS AND (2) AUTHORIZE ADVANCE ACTION TO RECRUIT CONSULTANTS IN SPECIFIC INSTANCES. THE WORKING PAPER ALSO SETS FORTH A PROCEDURE FOR HANDLING COST OVERRUNS IN TECHNICAL ASSISTANCE GRANT PROJECTS. NAC GUIDANCE IS REQUESTED. END SUMMARY.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 MANILA 15270 01 OF 03 310724Z

1. GUIDELINES ON USES OF CONSULTANTS WERE ORIGINALLY APPROVED IN 1968 AND REVISED IN 1973. AS THE LAST REVIEW TOOK PLACE ABOUT FIVE YEARS AGO, ADB MANAGEMENT CONSIDERS IT DESIRABLE THAT ANOTHER REVIEW BE UNDERTAKEN AND THAT ADOPTION OF REVISED GUIDELINES BE CONSIDERED. ADB WORKING PAPER 5-78 ON THIS SUBJECT WAS POUCHED AUGUST 28 AND WILL BE CONSIDERED BY THE BOARD OF DIRECTORS

ON OR ABOUT SEPTEMBER 28. THE WORKING PARTY OPENED WITH
NUMBER OF ISSUES OF GREATER OR LESSER SIGNIFICANCE, THREE
OF WHICH ARE ADDRESSED IN THE FOLLOWING PARAGRAPHS.

2. ADVANCE ACTION FOR RECRUITMENT OF CONSULTANTS: WHERE
SUCH ACTION APPEARS TO BE CLEARLY ADVANTAGEOUS, THE
BORROWER WOULD BE ALLOWED TO ENGAGE CONSULTANTS BEFORE
LOAN APPROVAL. IN SUCH INSTANCES, THE BOARD WOULD BE
APPROACHED IMMEDIATELY, ON A NO-OBJECTION BASIS.

3. COMMENT: WE ARE SYMPATHETIC TO THE BANK'S DESIRE TO
REDUCE DELAYS IN RECRUITMENT OF CONSULTANTS, AND ADVANCE
PROCUREMENT HAS BEEN PERMITTED IN THE PAST, IN SPECIAL
CIRCUMSTANCES. HOWEVER, TO INCLUDE SUCH A PRINCIPLE IN
THE GUIDELINES WOULD APPEAR TO ROUTINIZE WHAT NOW IS AN
UNUSUAL PROCEDURE, AND THUS ENCOURAGE BORROWERS TO SEEK
SUCH EXCEPTIONS. THEREFORE, WE WOULD PREFER NOT TO HAVE
THE ITEM INCLUDED IN THE GUIDELINES.

4. COST OVERRUNS IN TECHNICAL ASSISTANCE (TA) GRANT PRO-
JECTS: GENERALLY, BUDGETS APPROVED BY THE BOARD FOR TA
GRANT PROJECTS HAVE BEEN ADEQUATE TO COVER PROJECT COSTS.
IN A FEW CASES, HOWEVER, COST OVERRUNS HAVE DEVELOPED.
IN ONE CASE, THE BENEFICIARY FINANCED THE COST OVERRUN
FROM ITS OWN RESOURCES; IN THE OTHER CASES, THE BOARD
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 MANILA 15270 01 OF 03 310724Z

APPROVED SUPPLEMENTARY GRANTS TO COVER THE EXTRA COSTS.
BANK MANAGEMENT BELIEVES THAT, WHERE A COST OVERRUN CANNOT
BE AVOIDED, THE BANK SHOULD NORMALLY FINANCE THE ADDITION-
AL COSTS. MOREOVER, IT BELIEVES THE BENEFICIARY SHOULD
BE REQUESTED TO BEAR THE ADDITIONAL COST ONLY IN EXCEP-
TIONAL CASES WHERE THE COST OVERRUN IS SMALL.

5. NORMALLY, FOR CONSULTING SERVICES UNDER LOANS FROM
THE BANK, CONTRACTS ARE DENOMINATED AND PAYMENTS ARE MADE
IN THE CURRENCY OF THE COUNTRY OF ORIGIN OF THE CON-
SULTING FIRM. HOWEVER, FOR CONTRACTS FINANCED UNDER TA
GRANTS FROM THE BANK, THE PRACTICE HAS BEEN TO CONVERT
THE NEGOTIATED AMOUNT INTO US DOLLARS AT THE RATE PRE-
VAILING ON THE DATE THE CONTRACT IS SIGNED WITH AN INDI-
CATION OF THE CEILING AMOUNT OF THE CONTRACT. THIS
PRACTICE EXPOSES NON-US CONSULTANTS TO RISK OF FINANCIAL
LOSS FOR REASONS BEYOND THEIR CONTROL. TO RESOLVE THIS
DIFFICULTY, THE BANK COULD EXPRESS THE CEILING AMOUNT IN
THE CURRENCY OF THE MAIN EXPENDITURE ITEMS UNDER THE
CONTRACT, USUALLY THE CONSULTANTS OWN CURRENCY. (FOR
DMCS WITH INCONVERTIBLE CURRENCY, THE BILLING RATES ARE
USUALLY DENOMINATED IN DOLLARS.) THE EXISTING SYSTEM FOR

OBTAINING AUTHORIZATION FROM THE PRESIDENT OR BOARD OF DIRECTORS TO INCUR A TA EXPENDITURE WOULD HAVE TO BE MODIFIED IN THAT IT WOULD BE ACCOMPANIED BY THE UNDERSTANDING THAT THE AUTHORIZATIONS ARE ON THE BASIS OF EXCHANGE RATES PREVAILING WHEN THE CONTRACTS ARE SIGNED. IF THIS EVENTUALLY LEADS TO A COST OVERRUN, THE PRESIDENT WOULD SANCTION THE EXTRA AMOUNT OF ANY RESULTING COST OVERRUN AND INFORM THE BOARD.

6. COMMENT: THE PROPOSAL marginally may assist the competitive position of foreign consultants vis-a-vis their American competitors, since it removes an element of uncertainty from the cost estimates of the former group.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 MANILA 15270 02 OF 03 310734Z
ACTION TRSE-00

INFO OCT-01 EA-10 ISO-00 CIAE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
AID-05 COME-00 EB-08 FRB-03 XMB-02 OPIC-03 LAB-04
SIL-01 OMB-01 STR-07 CEA-01 NEA-10 IO-13 /122 W
-----039474 310737Z /11

P 310700Z AUG 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC PRIORITY 0926

LIMITED OFFICIAL USE SECTION 02 OF 03 MANILA 15270

THE EFFECT WOULD APPEAR TO BE MINIMAL SINCE THE PRICE ELEMENT, EVEN UNDER THE PROPOSED "TWO ENVELOPE" SYSTEM (IF NOT ABUSED) WOULD PLAY A SECONDARY ROLE IN DETERMINING WHICH CONSULTING FIRM WOULD RECEIVE THE CONTRACT. ON ITS FACE, THE PROPOSAL SEEMS TO BE A REASONABLE SOLUTION TO A PROBLEM INCREASINGLY BEING FACED BY THE BANK. YET IT DOES ESTABLISH A PRECEDENT WHEREBY THE BANK IN EFFECT ABSORBS THE EXCHANGE RISK.

7. USE OF DOMESTIC AND OTHER DMC CONSULTANTS: UNDER CURRENT PRACTICE, SECTION 3.2 OF THE GUIDELINES PROVIDES FOR SPECIAL CONSIDERATION BEING GIVEN TO DOMESTIC CONSULTANTS AND CONSULTANTS FROM OTHER DMCS. IT IS RECOMMENDED THAT THIS POLICY BE QUOTE EXPLAINED FOR EASIER APPLICATION BY THE BANK AND ITS BORROWERS UNQUOTE. THIS EXPLANATION IS PROPOSED TO BE ACCOMPLISHED BY SPECI-

FYING THAT FIRMS TO BE INVITED FOR PROPOSALS SHOULD REPRESENT IN A BALANCED WAY A NUMBER OF DIFFERENT MEMBER COUNTRIES AND SHOULD INCLUDE, WHERE FEASIBLE, TECHNICALLY QUALIFIED FIRMS FROM DEVELOPING MEMBER COUNTRIES OF THE BANK.

8. COMMENT: PARAGRAPH 15 OF THE WORKING PAPER NOTES
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 MANILA 15270 02 OF 03 310734Z

THAT QUALIFIED FIRMS FROM DMCS ARE REGULARLY SHORTLISTED BY THE BANK AND ITS BORROWERS ALONG WITH OTHER INTERNATIONAL CONSULTING FIRMS. ALSO, MORE AND MORE DOMESTIC CONSULTANTS ARE SHORTLISTED BY BORROWERS. PARAGRAPH 48 INDICATES THAT EXPERIENCE OVER THE LAST FEW YEARS SHOWS THAT THE PROVISIONS IN THE GUIDELINES ARE ADEQUATE IN PRACTICE TO SECURE THE BENEFIT OF PARTICIPATION OF DOMESTIC CONSULTANTS AND CONSULTANTS FROM DMCS UNDER THE BANK'S LOAN AND TA OPERATION. HENCE, USADB QUESTIONS THE NECESSITY OF REVISING THIS SECTION OF THE GUIDELINES, FOR IF INTERPRETED LITERALLY, IT COULD SERIOUSLY DISADVANTAGE CONSULTANTS IN DEVELOPED COUNTRIES. SHORT LISTS USUALLY CONSIST OF ONLY FIVE OR SIX CONSULTANTS. THE REQUIREMENT THAT THEY "SHOULD REPRESENT IN A BALANCED WAY A NUMBER OF DIFFERENT MEMBER COUNTRIES" ALREADY MEANS THAT TECHNICALLY QUALIFIED FIRMS FROM A NUMBER OF MEMBER COUNTRIES OFTEN ARE EXCLUDED FROM THE SHORT LISTS. ANY FURTHER REQUIREMENT THAT STATES THAT SUCH LISTS "SHOULD INCLUDE WHERE FEASIBLE TECHNICALLY QUALIFIED FIRMS FROM DEVELOPING MEMBER COUNTRIES OF THE BANK" COULD BE INTERPRETED TO MEAN THAT SUCH FIRMS SHOULD BE ACCORDED A PREFERRED POSITION ON EVERY SUCH LIST, WHICH, OF COURSE, WOULD FURTHER RESTRICT THE POSSIBILITIES OF CONSULTANTS FROM THE DEVELOPED COUNTRIES.

9. COST CONSIDERATIONS IN SELECTION OF CONSULTING FIRMS:
THE WORKING PAPER REVIEWS THE BANK'S PRESENT PROCEDURE AND CONCLUDES THAT BORROWERS MAY BE HANDICAPPED IN NEGOTIATING THE MOST ECONOMIC RATES, WHICH HAS LED TO PROTRACTED NEGOTIATIONS ON FINANCIAL TERMS. REGARDING ALTERNATIVES, THE WORKING PAPER COMPARES THE "TWO-ENVELOPE SYSTEM" AND THE "TWO-STEP APPROACH" AND CONCLUDES THAT THERE SEEM TO BE GREATER ADVANTAGES IN THE FORMER IN
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 MANILA 15270 02 OF 03 310734Z

TERMS OF EFFECTIVE MINIMIZATION OF COST, ADMINISTRATIVE CONVENIENCE, AND EXPEDITIOUS CONCLUSION OF A CONTRACT.

MANAGEMENT THEREFORE PROPOSES THAT A BORROWER WHO PREFERENCES TO INVITE PRICED PROPOSALS BY UTILIZING THE TWO-ENVELOPE SYSTEM MAY DO SO.

10. COMMENT: THIS, OF COURSE, IS THE MOST CONTROVERSIAL PROPOSAL. ALL THE DEVELOPING COUNTRIES ARE EXPECTED TO FAVOR IT. AUSTRALIA, CANADA, AND THE UNITED KINGDOM ARE EXPECTED TO OPPOSE THE CHANGE. APPARENTLY GERMANY IS RELATIVELY INDIFFERENT AND AT THE MOMENT JAPAN IS NON-COMMITTAL. FRANKLY, MORE HEAT THAN LIGHT IS BEING THROWN ON THIS ISSUE HERE. THOSE THAT WISH TO CHANGE THE SYSTEM, IN THE VIEW OF THE USADB, ARE UNABLE TO MAKE A CONVINCING CASE THAT THERE ARE PRESENT ABUSES THAT NEED RECTIFICATION. THE ARGUMENT THAT THEY ESPOUSE IS THAT SOMEHOW PLACING THE FINANCIAL TERMS OF THE PROVISIONALLY SELECTED FIRM IN WRITING, WILL IMPROVE THE COMPETITIVE SITUATION OF THE BORROWING COUNTRIES. (THE LOGIC OF THOSE WHO BELIEVE THAT THE NEW BANK PROPOSAL DOES NOT GO FAR ENOUGH IS, HOWEVER, IMPECCABLE, IN THAT THEY SUPPORT A SIMULTANEOUS OPENING OF THE FINANCIAL SUBMISSIONS OF SEVERAL, IF NOT ALL THE BIDDERS, IN ORDER TO PERMIT A CONSIDERATION OF THE FINANCIAL IMPLICATIONS OF THE BID ALONG WITH THE QUALITY OF THE CONSULTANCY OFFERING.)

11. IF THE PRINCIPLE OF THE TWO ENVELOPE SYSTEM IS ACCEPTED, THEN IT APPEARS TO US THAT THE SYSTEM USED BY THE IDB APPEARS TO BE THE MOST FAVORABLE. AS DESCRIBED "THE BORROWER OR BENEFICIARY SHALL ANALYZE THE TECHNICAL PROPOSALS AND ESTABLISH THE ORDER OF MERIT AMONG THEM. CONTRACT NEGOTIATION SHALL COMMENCE WITH THE FIRM OFFERING THE BEST PROPOSAL. THE SECOND ENVELOPE OF THIS FIRM SHALL BE OPENED IN THE PRESENCE OF THE FIRM AND UTILIZED IN

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 MANILA 15270 03 OF 03 310735Z
ACTION TRSE-00

INFO OCT-01 EA-10 ISO-00 CIAE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
AID-05 COME-00 EB-08 FRB-03 XMB-02 OPIC-03 LAB-04
SIL-01 OMB-01 STR-07 CEA-01 NEA-10 IO-13 /122 W
-----039517 310737Z /11

P 310700Z AUG 78
FM AMEMBASSY MANILA
TO SECSTATE WASHDC PRIORITY 0927

LIMITED OFFICIAL USE SECTION 03 OF 03 MANILA 15270

USADB

FOR NAC AGENCIES

PASS TREASURYDEP FOR SHERK

CONTRACT NEGOTIATION. ALL OTHER SECOND ENVELOPES WILL REMAIN SEALED, AND, IF AN AGREEMENT IS REACHED WITH THE FIRST FIRM, THEY WILL BE RETURNED TO THE RESPECTIVE FIRMS. IF AN AGREEMENT IS NOT REACHED WITH THE FIRST FIRM ON THE CONTRACT TERMS, IT WILL BE REJECTED BY WRITTEN NOTIFICATION AND NEGOTIATION WILL BE UNDERTAKEN WITH THE SECOND FIRM AND SO ON UNTIL A SATISFACTORY AGREEMENT IS REACHED."

12. IN CONTRAST TO THE ABOVE, THE MANAGEMENT PROPOSAL OF THE ADB CONTAINS A QUALIFYING CLAUSE THAT WOULD PERMIT THE INITIAL FIRM'S PROPOSAL TO BE REJECTED WITHOUT CONDUCTING NEGOTIATIONS. AS PRESENT PROPOSED, IT WOULD STATE: "THE FINANCIAL ENVELOPE OF THE FIRST-RANKED FIRM WOULD BE OPENED AND THE FIRM WOULD BE INVITED FOR CONTRACT NEGOTIATIONS IF THE FINANCIAL TERMS, PARTICULARLY THE REMUNERATION RATES PER MAN-MONTH SEEM TO BE WITHIN A LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 MANILA 15270 03 OF 03 310735Z

REASONABLE RANGE. IF THERE IS DOUBT THAT REMUNERATION RATES OR OTHER FINANCIAL TERMS PROPOSED ARE REASONABLE, THE BANK MUST BE CONSULTED PRIOR TO INVITING THE SECOND RANKED FIRM."

13. IF THE US WERE TO ACCEPT THE TWO-ENVELOPE PROPOSAL, I WOULD RECOMMEND THAT WE SUPPORT THE IDB SYSTEM PLUS THE PROVISION THAT THE BANK NEED BE CONSULTED PRIOR TO THE EXTENSION OF AN INVITATION TO THE SECOND RANKED FIRM.

14. THOSE THAT OPPOSE THE MOVE TO THE TWO ENVELOPE SYSTEM APPEAR TO BASE THEIR OPPOSITION, NOT ON ANY INHERENT DEFECTS IN THE SYSTEM AS PROPOSED, BUT ON THE BELIEF THAT IT WILL BE ABUSED, I.E. THAT IN ACTUALITY THE BIDS IN

THE SEALED ENVELOPES WOULD BECOME KNOWN TO THE EXECUTING AGENCY AND THAT COLLUSION MIGHT OCCUR OR AT A MINIMUM THAT THERE MIGHT BE A DECREASE IN THE QUALITY STANDARDS

OF THE CONSULTANCY PROPOSALS.

15. FRANKLY, I THINK IT MIGHT WELL BE UNBECOMING FOR THE

US REPRESENTATIVE TO ARGUE STRENUOUSLY SPECIFICALLY FOR THE STATUS QUO ON THIS ISSUE WHEN, ACCORDING TO INFORMATION AVAILABLE TO US HERE, THE UNITED STATES SUPREME COURT HAS UNANIMOUSLY RULED THAT IT WAS A VIOLATION OF US LAW AND AN ILLEGAL RESTRAINT OF TRADE TO TRY TO PREVENT PRICE OR FEES FROM BEING A FACTOR IN THE SELECTION PROCESS FOR ENGINEERING SERVICES.

16. THEREFORE, I WOULD RECOMMEND THAT WE MAKE THE MORE GENERAL ARGUMENT THAT THE PRESENT GUIDELINES HAVE SERVED US WELL AND THERE IS NO NEED TO CHANGE THE RULES IN ANY LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 MANILA 15270 03 OF 03 310735Z

MAJOR RESPECT. IF, HOWEVER, THE CONSENSUS SEEMS TO BE VEERING TOWARD ACCEPTING THE TWO ENVELOPE SYSTEM, I WOULD TRY TO OBTAIN THE ALTERATION MENTIONED ABOVE IN PARAGRAPH 13.

17. NAC GUIDANCE REQUESTED. EDMOND

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MANAGEMENT, CONSULTANTS, BANKS
Control Number: n/a
Copy: SINGLE
Draft Date: 31 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978MANILA15270
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780355-0863
Format: TEL
From: MANILA USADB
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978084/aaaaacwi.tel
Line Count: 355
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 96ffdc5f-c288-dd11-92da-001cc4696bcc
Office: ACTION TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1667663
Secure: OPEN
Status: NATIVE
Subject: REVIEW OF USES OF CONSULTANTS SUMMARY: ADB MANAGEMENT PROPOSES TO REVISE THE BANK'S GUIDELINES ON USES OF CONSULTANTS. THE MAJOR PROP
TAGS: EAID, EFIN, RP, ADB
To: STATE
Type: TE
vdkgvwkey: odbcc://SAS/SAS.dbo.SAS_Docs/96ffdc5f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014